



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MNDC, MNR, OLC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a refund of the security and pet damage deposit, a monetary order for emergency repairs made during the tenancy and reimbursement for increased cost of gas related to a malfunction of the hot water tank. The tenant is requesting reimbursement for the \$50.00 fee paid by the tenant for this application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

- Is the tenant entitled to the return of double the security and pet damage deposit pursuant to section 38 of the Act?
- Is the tenant entitled to monetary compensation for emergency repairs made during the tenancy?
- Is the tenant entitled to be reimbursed for increased gas consumption allegedly caused by a deficient water heater?

Background and Evidence

The tenancy began on July 15, 2012 as a one-year fixed term to end on July 31, 2013. However, the tenant moved out on September 30, 2013. Rent was \$1,590.00 per month and the tenant had paid a security and pet damage deposit totaling \$1,000.00, which has not been refunded by the landlord.

The tenant testified that she provided the landlord with her written forwarding address on October 31, 2013 and submitted a copy of a communication addressed to the landlord containing detailed allegations about what had transpired during the tenancy along with the tenant's forwarding address.

The landlord testified that they had not refunded the security deposit but pointed out that they had never received any forwarding address from the tenant at all.

The tenant testified that, during the tenancy she became concerned that her gas bills were much higher during certain months. The tenant testified that, after the safety valve failed completely in April 2013, she discovered that the water heater was not up to code and that higher gas bills during January, February, March and April 2013 occurred because the valve was gradually breaking down.

The tenant submitted a copy of her gas bills and a record of consumption confirming higher usage during the four months in question. The tenant stated that she seeks \$695.45, representing the tenant's calculations of the extra cost of gas.

The tenant stated that she also paid to have the emergency repair done to fix the hot water heater but was never reimbursed by the landlord for the \$158.76 cost. The tenant is seeking repayment of this amount as well.

The landlord testified that they had no knowledge that there was any problem because the tenant had not reported the broken hot water valve until several months after it allegedly began to fail. The landlord pointed out that in April 2013 when the hot water tank issue became urgent and the landlord was finally apprised of the situation, the landlord immediately gave the tenant permission to have the water tank repaired and later fully reimbursed the tenant for her expenses in cash.

In regard to the tenant's allegations of extraordinarily high gas consumption and costs during the winter months, the landlord stated that the increase was not due to a deficient hot water tank, but is likely attributable to normal winter heating costs as the heating system utilizes gas too.

The tenant is claiming total compensation of \$2,904.21. The landlord does not agree with any of the tenant's claims.

Analysis: Security Deposit Claim by Tenant

Section 38 of the Act states that within 15 days of the end of the tenancy and receiving the tenant's written forwarding address a landlord must either:

- repay, as provided in subsection (8), any security or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or

- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant's letter to the landlord dated October 31, 2014, states that the landlord did not provide a service address to the tenant as required under the Act. However, the tenancy agreement in evidence does include the landlord's service address. Moreover, the parties both testified during the hearing that the tenant and the landlord were aware that the landlord was moving into the rental unit and occupying it after the tenant vacated the unit.

I accept the landlord's testimony that they did not receive a forwarding address prior to this application. I find that the tenant has not submitted sufficient evidentiary proof to establish that the address was sent to the landlord and received by the landlord.

Given the above, I find that the tenant is entitled to a refund of \$1,000.00 not double the deposit, and I grant the tenant a monetary order for this amount.

Analysis: Damages and Compensation

In regard to the tenant's claim to be compensated for the cost of the emergency repairs I find that section 33(1) of the Act defines "emergency repairs" as repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. Under the Act, a tenant has the right to have emergency repairs made when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The Act also states that a landlord may take over completion of an emergency repair at any time and that a landlord must reimburse a tenant for amounts paid for emergency repairs. In this situation, I accept the tenant's position that that, the

repairs in question did qualify as “*emergency repairs*” under the Act and this would entitle the tenant to be reimbursed.

That being said, I accept the landlord's testimony that they have already reimbursed the tenant for the cost of the repairs done in April 2013. I find that, had this not been done, the tenant would have a right to deduct the cost from the rent by following the provisions of section 33 of the Act and providing the landlord with a copy of the receipt. I also find, on a balance of probabilities, that this outstanding matter would likely have been pursued by the tenant over a year ago when it came up during the tenancy. In light of the above, I find that, if the tenant's claim for \$158.76 must be dismissed.

In regard to the tenant's claim against the landlord for reimbursement of costs for additional heat consumption, I find that section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Therefore, in order to justify payment of damages under section 67, the Applicant must prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

With respect to additional gas consumption, I find that the tenant has not sufficiently proven that the higher costs resulted directly from the gradual failure of the hot water tank valve, nor from the lack of an expansion tank for the hot water heater.

Even if added costs were proven to be related to deficiencies of the hot water tank, I find that the tenant's monetary claim must be based on a violation of the Act by the landlord. I find that the landlord actually did comply with section 32 of the Act by immediately addressing the problem as soon as it was reported by the tenant, by giving the tenant authorization to have the work done without delay.

Given the above, I find that the tenant has not proven that costs of \$695.45 were incurred due to the problem with the water tank, nor has the tenant proven any violation of the Act on the part of the landlord.

Accordingly, I find that the tenant's claim for additional gas costs fails to satisfy all elements of the above test for damages and must therefore be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$1,000.00, as a refund of the tenant's security deposit retained by the landlord. I hereby grant a monetary order in the amount of \$1,000.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

The remainder of the tenant's application is dismissed without leave.

As the majority of the tenant's application has been dismissed, I find that the tenant is not entitled to be reimbursed for the \$50.00 cost of this application.

Conclusion

The tenant is partially successful in the application and is awarded a refund of the security deposit and the tenant's claim for additional damages is dismissed

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 24, 2014

